

The Challenge of Combating Impunity in Extrajudicial Executions and Enforced Disappearances through Judicial Interpretation and Application of International Human Rights Law

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Introduction

This paper chiefly aims to show that international human rights law and international humanitarian law not only authorizes, but obligates as well, the executive, judicial, and legislative departments to investigate, prosecute, and punish the perpetrators of enforced disappearances and extrajudicial executions.

Considered as a plague afflicting humanity, enforced disappearances and extrajudicial executions are both outlawed under international human rights law and international humanitarian law. This paper presents treaty provisions under both international law regimes to show the existing principles, norms, and standards applicable to enforced disappearances and extrajudicial executions.

This report shows who and how may perpetrators be held liable for committing these abominable crimes. Relevant jurisprudence are presented to show how the doctrines of command responsibility and common purpose can be made to apply to the officers and personnel of the police and armed forces who ordered, planned, and actually carried out enforced disappearances and extrajudicial executions. Treaty provisions are also presented to show that the scourge of enforced disappearances can be considered, under certain circumstances, as a crime against humanity.

This paper discusses the state obligation to investigate, prosecute, and punish the perpetrators, provide effective remedies to victims, and prevent the recurrence of enforced disappearances.

This work also shows that enforced disappearances and extrajudicial executions are implicitly prohibited under the Philippine Constitution and that substantive Philippine law and treaties can be combined by the courts in addressing enforced disappearances by holding perpetrators accountable.

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Rights to Respect, Protect, and Fulfill the Article 19 Right to Access Information, Free Speech, Free Press, and Free Expression, UN Human Rights Committee, Geneva, July 2007

International Human Rights Law Center Representative – Presenter of Shadow Report titled Chile’s Breach of its Obligations under the International Covenant on Civil and Political Rights to Protect the Rights of Sexual Minorities, Including Lesbian, Gay, Bisexual, and Transgender People, UN Human Rights Committee, New York, March 2007

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The paper also presents existing international law instruments that aim to combat impunity attending the perpetuation of enforced disappearances and extrajudicial executions.

The author concludes by suggesting recommendations on how the judiciary in particular could strengthen its institutional capabilities to combat impunity that shields perpetrators of enforced disappearances and extrajudicial executions from being brought to the bar of justice. The appendices to this paper include:

Appendix I – Excerpt from the 2007 Report of the Special Rapporteur

Appendix II – Signatories to the Disappearance Convention

Enforced Disappearances

Definition

Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (“Disappearance Convention”) defines enforced disappearance as follows:¹

¹ International Convention for the Protection of All Persons from Enforced Disappearance Available at <http://www.ohchr.org/english/law/disappearance-convention.htm>

For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

The Rome Statute of the International Criminal Court (“Rome Statute”)² gives this definition of enforced disappearances:

(i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

In its General Comment on the definition of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances (“WGEID”) states:

The Working Group takes note that the international instruments on human rights mentioned above, that is, the Declaration, the International Convention and the Inter-American Convention, contain definitions of enforced disappearance that are substantially similar. The definition contained in the Rome Statute differs from those contained in the international instruments on human rights indicated above, inasmuch as the definition of enforced disappearance provided by the Rome Statute includes

(i) political groups as potential perpetrators of the crime, even if they do not act on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, and

(ii) the intention of removing the victim from the protection of the law for a prolonged period of time, as an element of the crime.

Meaning of Intention of Removing the Victim from the Protection of the Law

² Available at http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_120704-EN.pdf

In its General Comment, the WGEID elucidates on what intention of removing the victim from the protection of the law means:

5. In accordance with article 1.2 of the Declaration, any act of enforced disappearance has the consequence of placing the persons subjected thereto outside the protection of the law. Therefore, the Working Group admits cases of enforced disappearance without requiring that the information whereby a case is reported by a source should demonstrate, or even presume, the intention of the perpetrator to place the victim outside the protection of the law.

Enforced Disappearance under Philippine Law

Even though the Philippines does not have a law explicitly dealing with enforced disappearance, the 1987 Constitution contains provisions that implicitly prohibit enforced disappearances and extrajudicial executions.

Article III on the Bill of Rights of the 1987 Constitution provides:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

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(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

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Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Section 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion, when the public safety requires it.

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Section 17. No person shall be compelled to be a witness against himself.

Section 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Xxx

Commencement of the Offense

The WGEID explains how the crime of enforced disappearance begins:

7. Under the definition of enforced disappearance contained in the Declaration, the criminal offence in question starts with an arrest, detention or abduction against the will of the victim, which means that the enforced disappearance may be initiated by an illegal detention or by an initially legal arrest or detention. That is to say, the protection of a victim from enforced disappearance must be effective upon the act of deprivation of liberty, whatever form such deprivation of liberty takes, and not be limited to cases of illegitimate deprivations of liberty.

Detention followed by Extrajudicial Execution

In its General Comment, the WGEID characterizes cases of detention followed by extrajudicial execution as enforced disappearances:

9. As the Working Group said in the same general comment, administrative or pre-trial detention is not *per se* a violation of International Law or of the Declaration. However, if a detention, even if short-term, is followed by an extrajudicial execution, such detention cannot be considered of administrative or pre-trial nature under article 10 of the Declaration, but rather as a condition where the immediate consequence is the placement of the detainee beyond the protection of the law. The Working Group considers that when the dead body of the victim is found mutilated or with clear signs of having been tortured or with the arms or legs tied, those circumstances clearly show that the detention was not immediately followed by an execution, but that the deprivation of liberty had some duration, even of at least a few hours or days. A situation of such nature, not only constitutes a violation to the right not to be

disappeared, but also to the right not to be subjected to torture, to the right to recognition as a person before the law and to the right to life, as provided under article 1.2 of the Declaration.

10. Therefore, a detention, followed by an extrajudicial execution, as described in the preceding paragraph, is an enforced disappearance proper, as long as such detention or deprivation of liberty was carried out by governmental agents of whatever branch or level, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the government, and, subsequent to the detention, or even after the execution was carried out, state officials refuse to disclose the fate or whereabouts of the persons concerned or refuse to acknowledge the act having been perpetrated at all.

State Actors: Perpetrators of Enforced Disappearances

Under the Disappearance Convention, only state actors can be considered as perpetrators of the crime of enforced disappearances. The WGEID explains in its General Comment:

1. With respect to the perpetrators of the crime, the Working Group has clearly established that, for purposes of its work, enforced disappearances are only considered as such when the act in question is perpetrated by state actors or by private individuals or organized groups (e.g. paramilitary groups) acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government.

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4. Based on the foregoing, the Working Group does not admit cases regarding acts which are similar to enforced disappearances, when they are attributed to persons or groups not acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, such as terrorist or insurgent movements fighting the Government on its own territory, since it considers that it has to strictly adhere to the definition contained in the Declaration.

Crimes Against Humanity

Under international law, enforced disappearances can qualify as a crime against humanity when committed systematically or on a wide scale. The fifth preambular paragraph of the Disappearance Convention provides:

Aware of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity

Article 5 of the Disappearance Convention states:

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 7 on Crimes against Humanity of the Rome Statute provides:

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

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(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

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(i) Enforced disappearance of persons;

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(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The Rome Statute provides:

2. For the purpose of paragraph 1:

(a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

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(e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

Article 8 (War Crimes) of the Rome Statute provides:

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

Command Responsibility

Article 6 of the International Convention for the Protection of All Persons from Enforced Disappearance provides:

1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(b) A superior who:

(i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;

(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and
(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced

disappearance or to submit the matter to the competent authorities for investigation and prosecution;

(c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.

Article 23 of the Disappearance Convention states:

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:

(a) Prevent the involvement of such officials in enforced disappearances;

(b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;

(c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.

2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

Article 28 of the Rome Statute³ states the responsibility of commanders and other superiors as follows:
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³ Rome Statute of the International Criminal Court; circulated as document A/CONF.183/9 of 17 July 1998 and corrected by procès-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where: (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

In re Yamashita⁴ discusses the doctrine of command responsibility as follows:

The Charge. Neither Congressional action nor the military orders constituting the commission authorized it to place petitioner on trial unless the charge preferred against him is of a violation of the law of war. The charge, so far as now relevant, is that petitioner, between October 9, 1944 and September 2, 1945, in the Philippine Islands, 'while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to *14 control the operations of the members of his command, permitting them to commit brutal

⁴ 327 U.S. 1, 66 S.Ct. 340, 90 L.Ed. 499

atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he * * * thereby violated the laws of war.’

Bills of particulars, filed by the prosecution by order of the commission, allege a series of acts, one hundred and twenty-three in number, committed by members of the forces under petitioner's command, during the period mentioned. The first item specifies the execution of a ‘a deliberate plan and purpose to massacre and exterminate a large part of the civilian population of Batangas Province, and to devastate and destroy public, private and religious property therein, as a result of which more than 25,000 men, women and children, all unarmed noncombatant civilians, were brutally mistreated and killed, without cause or trial, and entire settlements were devastated and destroyed wantonly and without military necessity.’ Other items specify acts of violence, cruelty and homicide inflicted upon the civilian population and prisoners of war, acts of wholesale pillage and the wanton destruction of religious monuments.

[14] It is not denied that such acts directed against the civilian population of an occupied country and against prisoners of war are recognized in international law as violations of the law of war. Articles 4, 28, 46, and 47, Annex to Fourth Hague Convention, 1907, 36 Stat. 2277, 2296, 2303, 2306, 2307. But it is urged that the charge does not allege that petitioner has either committed or directed the commission of such acts, and consequently that no violation is charged as against him. But this overlooks the fact that the gist of the charge is an unlawful breach of duty by petitioner as an army commander to control the operations of the members of his command by ‘permitting them to commit’ the extensive and widespread atrocities specified. The question then is whether the law of war imposes *15 on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result. That this was the precise issue to be tried was made clear by the statement of the prosecution at the opening of the trial.

[15] It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose **348 to protect

civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.

This is recognized by the Annex to Fourth Hague Convention of 1907, respecting the laws and customs of war on land. Article I lays down as a condition which an armed force must fulfill in order to be accorded the rights of lawful belligerents, that it must be 'commanded by a person responsible for his subordinates.' 36 Stat. 2295. Similarly Article 19 of the Tenth Hague Convention, relating to bombardment by naval vessels, provides that commanders in chief of the belligerent vessels 'must see that the above Articles are properly carried out.' 36 Stat. 2389. And Article 26 of the Geneva Red Cross Convention of 1929, 47 Stat. 2074, 2092, for the amelioration of the condition of the wounded and sick in armies in the field, makes it 'the duty of the commanders-in-chief of the belligerent*16 armies to provide for the details of execution of the foregoing articles (of the convention), as well as for unforeseen cases.' And, finally, Article 43 of the Annex of the Fourth Hague Convention, 36 Stat. 2306, requires that the commander of a force occupying enemy territory, as was petitioner, 'shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.'

[16] These provisions plainly imposed on petitioner, who at the time specified was military governor of the Philippines, as well as commander of the Japanese forces, an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population. This duty of a commanding officer has heretofore been recognized, and its breach penalized by our own military tribunals.FN3 A like principle has been applied so as to impose liability on the United States in international arbitrations. Case of Jenaud, 3 Moore, International Arbitrations, 3000; Case of 'The Zafiro,' 5 Hackworth, Digest of International Law, 707.

FN3 Failure of an officer to take measures to prevent murder of an inhabitant of an occupied country committed in his presence. Gen.Orders No. 221, Hq.Div. of the Philippines, August 17, 1901. And in Gen.Orders No. 264, Hq.Div. of the Philippines, September 9, 1901, it was held that an officer could not be found guilty for

failure to prevent a murder unless it appeared that the accused had 'the power to prevent' it.

In the **Tadic**⁵ case, the International Criminal Tribunal for the Former Yugoslavia elucidated on the principle of common purpose:

220. In sum, the Appeals Chamber holds the view that the notion of common design as a form of accomplice liability is firmly established in customary international law and in addition is upheld, albeit implicitly, in the Statute of the International Tribunal. As for the objective and subjective elements of the crime, the case law shows that the notion has been applied to three distinct categories of cases. First, in cases of co-perpetration, where all participants in the common design possess the same criminal intent to commit a crime (and one or more of them actually perpetrate the crime, with intent). Secondly, in the so-called "concentration camp" cases, where the requisite mens rea comprises knowledge of the nature of the system of ill-treatment and intent to further the common design of ill-treatment. Such intent may be proved either directly or as a matter of inference from the nature of the accused's authority within the camp or organisational hierarchy. With regard to the third category of cases, it is appropriate to apply the notion of "common purpose" only where the following requirements concerning mens rea are fulfilled: (i) the intention to take part in a joint criminal enterprise and to further - individually and jointly - the criminal purposes of that enterprise; and (ii) the foreseeability of the possible commission by other members of the group of offences that do not constitute the object of the common criminal purpose. Hence, the participants must have had in mind the intent, for instance, to ill-treat prisoners of war (even if such a plan arose extemporaneously) and one or some members of the group must have actually killed them. In order for responsibility for the deaths to be imputable to the others, however, everyone in the group must have been able to predict this result. It should be noted that more than negligence is required. What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk. In other words, the so-called *dolus eventualis* is required (also called "advertent recklessness" in some national legal systems).

221. In addition to the aforementioned case law, the notion of common plan has been upheld in at least two international treaties. The first of these is the International Convention for the Suppression

⁵ Prosecutor v. Dusko Tadic, International Criminal Tribunal for the Former Yugoslavia, Judgment, 15 July 1999, available at <http://www.un.org/icty/tadic/appeal/judgement/>

of Terrorist Bombing, adopted by consensus by the United Nations General Assembly through resolution 52/164 of 15 December 1997 and opened for signature on 9 January 1998. Pursuant to Article 2(3)(c) of the Convention, offences envisaged in the Convention may be committed by any person who:

[i]n any other way [other than participating as an accomplice, or organising or directing others to commit an offence] contributes to the commission of one or more offences as set forth in paragraphs 1 or 2 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

The negotiating process does not shed any light on the reasons behind the adoption of this text.²⁷⁹ This Convention would seem to be significant because it upholds the notion of a "common criminal purpose" as distinct from that of aiding and abetting (couched in the terms of "participating as an accomplice [in] an offence"). Although the Convention is not yet in force, one should not underestimate the fact that it was adopted by consensus by all the members of the General Assembly. It may therefore be taken to constitute significant evidence of the legal views of a large number of States.

222. A substantially similar notion was subsequently laid down in Article 25 of the Statute of the International Criminal Court, adopted by a Diplomatic Conference in Rome on 17 July 1998 ("Rome Statute")²⁸⁰ At paragraph 3(d), this provision upholds the doctrine under discussion as follows:

[In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person ...]

(d) In any other way [other than aiding and abetting or otherwise assisting in the commission or attempted commission of a crime] contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

i. Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

ii. Be made in the knowledge of the intention of the group to commit the crime.

223. The legal weight to be currently attributed to the provisions of the Rome Statute has been correctly set out by Trial Chamber II in *Furundzija*.²⁸¹ There the Trial Chamber pointed out that the Statute is still a non-binding international treaty, for it has not yet entered into force. Nevertheless, it already possesses significant legal value. The Statute was adopted by an overwhelming majority of the States attending the Rome Diplomatic Conference and was substantially endorsed by the Sixth Committee of the United Nations General Assembly. This shows that that text is supported by a great number of States and may be taken to express the legal position i.e. *opinio iuris* of those States. This is consistent with the view that the mode of accomplice liability under discussion is well-established in international law and is distinct from aiding and abetting.²⁸²

224. As pointed out above, the doctrine of acting in pursuance of a common purpose is rooted in the national law of many States. Some countries act upon the principle that where multiple persons participate in a common purpose or common design, all are responsible for the ensuing criminal conduct, whatever their degree or form of participation, provided all had the intent to perpetrate the crime envisaged in the common purpose. If one of the participants commits a crime not envisaged in the common purpose or common design, he alone will incur criminal responsibility for such a crime. These countries include Germany²⁸³ and the Netherlands.²⁸⁴ Other countries also uphold the principle whereby if persons take part in a common plan or common design to commit a crime, all of them are criminally responsible for the crime, whatever the role played by each of them. However, in these countries, if one of the persons taking part in a common criminal plan or enterprise perpetrates another offence that was outside the common plan but nevertheless foreseeable, those persons are all fully liable for that offence. These countries include civil law systems, such as that of France²⁸⁵ and Italy.²⁸⁶

They also embrace common law jurisdictions such as England and Wales,²⁸⁷ Canada,²⁸⁸ the United States,²⁸⁹ Australia²⁹⁰ and Zambia.²⁹¹

225. It should be emphasised that reference to national legislation and case law only serves to show that the notion of common purpose upheld in international criminal law has an underpinning in many national systems. By contrast, in the area under discussion, national legislation and case law cannot be relied upon as a source of

international principles or rules, under the doctrine of the general principles of law recognised by the nations of the world: for this reliance to be permissible, it would be necessary to show that most, if not all, countries adopt the same notion of common purpose. More specifically, it would be necessary to show that, in any case, the major legal systems of the world take the same approach to this notion. The above brief survey shows that this is not the case. Nor can reference to national law have, in this case, the scope and purport adumbrated in general terms by the United Nations Secretary-General in his Report, where it is pointed out that "suggestions have been made that the international tribunal should apply domestic law in so far as it incorporates customary international humanitarian law".²⁹² In the area under discussion, domestic law does not originate from the implementation of international law but, rather, to a large extent runs parallel to, and precedes, international regulation.

226. The Appeals Chamber considers that the consistency and cogency of the case law and the treaties referred to above, as well as their consonance with the general principles on criminal responsibility laid down both in the Statute and general international criminal law and in national legislation, warrant the conclusion that case law reflects customary rules of international criminal law.

227. In sum, the objective elements (*actus reus*) of this mode of participation in one of the crimes provided for in the Statute (with regard to each of the three categories of cases) are as follows:

- i. A plurality of persons. They need not be organised in a military, political or administrative structure, as is clearly shown by the *Essen Lynching* and the *Kurt Goebell* cases.
- ii. The existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute. There is no necessity for this plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.
- iii. Participation of the accused in the common design involving the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of those provisions (for example, murder, extermination, torture, rape, etc.), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose.

228. By contrast, the mens rea element differs according to the category of common design under consideration. With regard to the first category, what is required is the intent to perpetrate a certain crime (this being the shared intent on the part of all co-perpetrators). With regard to the second category (which, as noted above, is really a variant of the first), personal knowledge of the system of ill-treatment is required (whether proved by express testimony or a matter of reasonable inference from the accused's position of authority), as well as the intent to further this common concerted system of ill-treatment. With regard to the third category, what is required is the intention to participate in and further the criminal activity or the criminal purpose of a group and to contribute to the joint criminal enterprise or in any event to the commission of a crime by the group. In addition, responsibility for a crime other than the one agreed upon in the common plan arises only if, under the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or other members of the group and (ii) the accused willingly took that risk.

229. In light of the preceding propositions it is now appropriate to distinguish between acting in pursuance of a common purpose or design to commit a crime, and aiding and abetting.

(i) The aider and abettor is always an accessory to a crime perpetrated by another person, the principal.

(ii) In the case of aiding and abetting no proof is required of the existence of a common concerted plan, let alone of the pre-existence of such a plan. No plan or agreement is required: indeed, the principal may not even know about the accomplice's contribution.

(iii) The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime. By contrast, in the case of acting in pursuance of a common purpose or design, it is sufficient for the participant to perform acts that in some way are directed to the furthering of the common plan or purpose.

(iv) In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of a specific crime by the principal. By contrast, in the case of common purpose or design more is required (i.e., either intent to perpetrate the crime or intent to pursue the common

criminal design plus foresight that those crimes outside the criminal common purpose were likely to be committed), as stated above.

Defense of Superior Orders

Article 7 of the Disappearance Convention states:

1. Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish

(a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

(b) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.

Article 33 of the Rome Statute states:

Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

In its General Comment, the WGEID states:

2. The Working Group concurs with the provisions of article 3 of the International Convention, in connection with the fact that States shall take appropriate measures to investigate acts comparable to enforced disappearances committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

Philippine Obligation under International Humanitarian and Human Rights Law to Suppress Enforced Disappearances and Extrajudicial Executions

Article 3 of the Universal Declaration of Human Rights (UDHR)⁶ provides:

Everyone has the right to life, liberty and security of person.

UDHR Article 5 provides:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

General Comment ICCPR

Article 26 (on the principle of *pacta sunt servanda*) of the 1969 Vienna Convention on the Law of Treaties (“Vienna Convention”) provides that

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Further, Article 27 of the Vienna Convention on internal law and observance of treaties provides:

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

Further, the UN Human Rights Committee, in its General Comment No. 31,⁷ explained the binding and obligatory character of the ICCPR upon States Parties:

⁶ Available at <http://www.unhchr.ch/udhr/lang/eng.pdf>

⁷ General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Human Rights Committee, 2004

The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level –national, regional or local—are in a position to engage the responsibility of the State Party.

Section 2, Article II of the 1987 Philippine Constitution on the Declaration of Principles and State Policies

adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Treaties Ratified by the Philippines Relevant to Enforced Disappearances and Extrajudicial Executions

Article 6 of the International Covenant on Civil and Political Rights, which was signed by the Philippines on 19 December 1966 and ratified on 23 October 1986,⁸ provides:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)⁹ prohibits extrajudicial execution:

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever:

(a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

The Philippines is also a State Party to the following:

a. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

b. Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity

⁸ Available at <http://www.ohchr.org/english/countries/ratification/4.htm>

⁹ Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts
Available at <http://www.ohchr.org/english/law/protocol2.htm>

c. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

d. The Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (New York, 26 November 1968) Acceded to by the Philippines on 15 May 1973.¹⁰

In Resolution 1983/24 dated 26 May 1983, the UN Economic and Social Council stated that the Council

1. Strongly condemns and deplores the brutal practice of summary executions in various parts of the world, and its apparent increase;

Impunity

Breaking the wall of impunity constitutes the most crucial step in stopping and erecting the barrier of non-recurrence of enforced disappearances and extrajudicial executions. In its 2007 report, the WGEID states:¹¹

503. A further goal of public policy must be the eradication of the culture of impunity for the perpetrators of disappearances that is found to exist in many States. The Working Group therefore wishes to stress again the importance of ending impunity for the perpetrators of enforced disappearances. This must be understood as a crucial step, not only in the pursuit of justice but also in effective prevention. The Working Group encourages the Office of the High Commissioner for Human Rights to promote the Declaration and to include in its programme of technical cooperation the strengthening of national capacities for the prevention and eradication of disappearance.

504. The Working Group recommends that the international community and international NGOs support the development and strengthening of regional and national civil society institutions that could deter serious human rights violations, such as in sub-Saharan Africa and other parts of the world.

In Resolution 2002/41, the UN Commission on Human Rights emphasized that

¹⁰ Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (New York, 26 November 1968)

Available at <http://www.ohchr.org/english/countries/ratification/6.htm>

¹¹ Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/4/41, 25 January 2007, p. 103

impunity is simultaneously one of the underlying causes of enforced disappearances and one of the major obstacles to the elucidation of cases thereof and that there is a need for effective measures to combat the problem of impunity

Special Rapporteur Bacre Waly Ndiaye¹² identified impunity as the principal reason behind the perpetuation of enforced disappearances. Ndiaye stated:

46. It is the obligation of Governments to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish the perpetrators, to grant compensation to the victims or their families and to take effective measures to avoid future recurrence of such violations. The Special Rapporteur has noted that impunity continues to be the principal cause of the perpetuation and encouragement of violations of human rights, and particularly extrajudicial, summary or arbitrary executions.

The Special Rapporteur has the mandate to act upon

(b) Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, private individuals or groups cooperating with or tolerated by the Government, as well as by unidentified persons who may be linked to the categories mentioned above.

The WGEID summarizes the impediments¹³ to addressing enforced disappearances:

17. The Working Group would also draw attention to the phenomenon of underreporting of disappearance cases. Reasons include poverty, illiteracy, feelings of powerlessness, fear of reprisal, weak administration of justice, ineffectual reporting channels, institutionalized systems of impunity, a practice of silence and, in some regions, restrictions on the work of civil society on this sensitive issue. Nevertheless, the Working Group continues to receive positive information on the development of a cross-regional

¹² Bacre Waly Ndiaye, Report by the Special Rapporteur, Question Of The Violation Of Human Rights And Fundamental Freedoms In Any Part Of The World, With Particular Reference To Colonial And Other Dependent Countries And Territories Extrajudicial, summary or arbitrary executions, submitted pursuant to Commission on Human Rights resolution 1996/74, E/CN.4/1997/60, 24 December 1996

¹³ Id., p. 10

network of associations of families of victims and NGOs that are dealing with this issue and commends these efforts.

Remedies

Article 8 of the Universal Declaration of Human Rights states:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 2 of the ICCPR provides:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article III (Bill of Rights) of the 1987 Constitution provides:

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

The Philippine State's Obligation to Investigate, Prosecute, and Punish Perpetrators of Enforced Disappearances and Extrajudicial Executions

The UN General Assembly¹⁴ underscored the states' obligation to investigate and prosecute violators of international human rights law and international humanitarian law:

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.

In his report,¹⁵ submitted pursuant to Commission on Human Rights resolution 1996/74, Special Rapporteur Bacre Waly Ndiaye stressed the state obligation to investigate, prosecute, and punish perpetrators of extrajudicial executions:

46. It is the obligation of Governments to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish the perpetrators, to grant compensation to the victims or their families and to take effective measures to avoid future recurrence of such violations. The Special Rapporteur has noted that impunity continues to be the principal cause of the perpetuation and encouragement of violations of human rights, and particularly extrajudicial, summary or arbitrary executions.

The Special Rapporteur emphasized the need for states to investigate, prosecute, and punish the perpetrators.¹⁶

92. In his reports to the Commission on Human Rights, the Special Rapporteur has made ample reference to the obligation of States to

¹⁴ General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Laws, A/RES/60/147, 21 March 2006, para. 4, at p.5

¹⁵ Id.

¹⁶ Id.

conduct exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish the perpetrators, to grant adequate compensation to the victims or their families, and to take effective measures to avoid the recurrence of such violations.

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131. All States should conduct exhaustive and impartial investigations into allegations of violations of the right to life, in all of its manifestations, and identify those responsible. They should also prosecute the alleged perpetrators of such acts, while taking effective measures to avoid the recurrence of such violations. To this effect, blanket amnesty laws prohibiting the prosecution of alleged perpetrators and violating the rights of the victims should not be endorsed.

Ndiaye mentioned the Philippines as among the countries to whom “the Special Rapporteur sent allegations of extrajudicial, summary or arbitrary executions on behalf of more than 1,300 individuals.”¹⁷

Special Rapporteur Philip Alston¹⁸ issued dire warnings if enforced disappearances and extrajudicial executions will not be stopped:

6. The consequences of a failure to end extrajudicial killings in the Philippines will be dire. Efforts to resolve the various insurgencies will be set back significantly. Incentives to opposition groups to head for the hills rather than seek to engage in democratic politics will be enhanced, and international support for the Government will be undermined. A multifaceted and convincing governmental response is thus urgent.

7. In essence, the problem must be tackled at two different, but complementary, levels. At one level there is indeed a need for more staff, more resources, and more specialist expertise, a better witness-protection programme, and the strengthening of key institutions.

Conclusion

Due to impunity, state actors are able to undermine the rule of law through their perpetuation of enforced disappearances and

¹⁷ Id. At para. 19.

¹⁸ Philip Alston, Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Philippines (12-21 February 2007), Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council” Philip Alston, p. 3.

extrajudicial executions on a national scale. The systematic and widespread perpetration of extrajudicial executions and enforced disappearances in various parts of the country indicates that the perpetrators are committing these crimes in pursuance of a plan, policy, or scheme formulated and directed by high-ranking officials. The wide scale commission of enforced disappearances and extrajudicial executions can make the perpetrators liable for crimes against humanity.

Breaking down the wall of impunity poses an enormous challenge to the courts and other stakeholders. Multifaceted and multilevel initiatives and responses in national and international levels, especially in the preventive aspect, needed to be carried out.

The Philippine executive, judicial, and legislative departments need to muster a strong political will to investigate, prosecute, and punish the perpetrators of enforced disappearances and extrajudicial executions.

The state should provide adequate and effective remedies to desaparecidos, the victims of extrajudicial executions, and their kin.

Lastly, the state should erect the barrier of non-recurrence of enforced disappearances and extrajudicial executions.

Recommendations

Based on the foregoing, the author suggests the following recommendations:

1. Amend the Revised Rules of Evidence to institutionalize the doctrine of command responsibility and to allow the prosecution and trial of persons based on the doctrine of command responsibility, adopting the Disappearance Convention and Rome Statute provisions along with international law precedents, i.e., **Yamashita** and **Tadic**. Through the principle of conspiracy, examined in light of current international criminal law jurisprudence on the doctrines of command responsibility and common purpose, the liability of the members of the chain of command, whether as principal, accomplice, or accessory, can be determined according to the circumstances of the case
2. Enact a law requiring officers and personnel of the Armed Forces and the Philippine National Police to report any other officers or members of the PNP or Armed Forces who promote, facilitate,

condone, tolerate, encourage, or abet the perpetration of enforced disappearances and extrajudicial executions in any way.

3. Formulate a training program for AFP and PNP officers and personnel on enforced disappearances and summary executions according to the international human rights and humanitarian law framework
4. Strengthen investigation and prosecution capabilities of the National Bureau of Investigation and the Department of Justice
5. Raise community awareness through media campaigns about the evils of extrajudicial executions and enforced disappearances

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Appendix I

Excerpt from the Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/4/41, 25 January 2007, pp. 70-72.

Urgent actions

334. The Working Group transmitted four cases under its urgent action procedure to the Government of the Philippines. All four cases concerned persons who reportedly disappeared from the Central Luzon region. **Philip Limjoco** allegedly disappeared near a bus terminal.

Philip Dela Cruz was reportedly taken from the side of the road by an armed group. The two other urgent action cases concerned **Tessie Abellera** and her son **Rodel Abellera**, who were allegedly taken by soldiers from their home.

Standard cases

335. The Working Group transmitted to the Government under its standard procedure the cases of three persons who reportedly disappeared together in June 2006 in the Bulacan District of the Philippines. The cases concerned **Manuel Merino**, **Karen Empeno** and **Sherlyn Cadapan**.

Information from the Government

336. The Government of the Philippines sent two communications to the Working Group. On 22 August 2006, the Government reported

on an investigation of the cases of four persons who disappeared in 2005. It reported that an investigation of the case had been conducted by the Commanding General of the Philippine Army, 4th Infantry Division. Initial reports revealed that the allegations against the 58th Infantry Battalion of the Philippine Army were unsubstantiated.

337. On 11 October 2006, the Government stated that the licence plate number attributed to the vehicle that had been used by soldiers to take a mother and son from their home (see paragraph 334) had been issued to a different vehicle and therefore had been purposely used to A/HRC/4/41 page 71 mislead the investigation. A communication dated 8 November 2006 regarding efforts undertaken by the Government to implement the recommendations made following the visit to the Philippines by the Working Group in 1991 was received too late for review, and will be considered at the next session of the Working Group for inclusion in the 2007 report.

Information from sources

338. No information was received from sources regarding outstanding cases.

Request for a visit

339. Following a decision of the Working Group at its seventy-eighth session, a request for a visit was sent to the Government of the Philippines on 24 May 2006. The Working Group has not yet received a reply.

Summary of the situation prior to the period under review

340. The majority of the reported cases of disappearance occurred throughout the country in the late 1970s and early 1980s in the context of the Government's anti-insurgency campaign.

Alleged victims included farmers, students, social and health workers, members of Church groups, lawyers, journalists and economists. Since 1980, many reported cases of disappearance concerned young men living in rural and urban areas who participated in legally constituted organizations which, according to the military authorities, were fronts for the outlawed Communist Party of the Philippines and its armed wing, the New People's Army (NPA).

341. Disappearances have continued to occur since the 1990s, mainly in the context of military operations against the NPA, the Moro National Liberation Front, the Mindanao Islamic Liberation Front, the Citizen Armed Forces Geographical Units and the Civilian Volunteer Organizations.

342. The Working Group visited the Philippines in 1991. The main recommendation to the Government was that the National Police should be severed from the Army and that the Government should introduce legislation to narrow the powers of arrest. It was also recommended that the Philippines Commission on Human Rights be empowered to make unannounced spot checks at places of detention, as well as improve protection of witnesses and overhaul the law and practice of habeas corpus (see E/CN.4/1991/20/Add.1, para. 168).

Total cases transmitted, clarified and outstanding

343. In the past and during the period under review, the Working Group has transmitted 758 cases to the Government; of those, 33 cases have been clarified on the basis of information provided by the source, 124 cases have been clarified on the basis of information provided by the Government and 601 cases remain outstanding.

Observations

344. The Working Group reminds the Government of its obligation under article 13 of the Declaration to make every effort to clarify the 601 outstanding cases.

345. The Working Group invites the Government to provide it with current information on the status of the consolidated anti-disappearance bills and reminds the Government of its obligation under article 4 of the Declaration to make all acts of enforced disappearance “offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness”.

Appendix II

Signatories to the International Convention for the Protection of All Persons from Enforced Disappearance (New York, 20 December 2006)

(Reprinted from

<http://www.ohchr.org/english/countries/ratification/16.htm>)

Last update: 19 April 2007

Not yet into force:

in accordance with article 39 which reads as follows: “This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. 2. For each State ratifying or acceding to this Convention after the deposit of the twentieth instrument of ratification or accession, this Convention shall enter into force on the thirtieth day after the date of the deposit of that State's instrument of ratification or accession.”.

Status: Signatories: 59.

Text: Doc.A/61/488.

Note: The above Convention was adopted on 20 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/177. In accordance with its article 38, the Convention shall be open for signature by all Member States of the United Nations. The Convention shall be open for signature on 6 February 2007 in Paris, France, and thereafter at United Nations Headquarters in New York.

Participant	Signature	Ratification, Accession (a)
Albania	6 Feb 2007	.
Algeria	6 Feb 2007	.
Argentina	6 Feb 2007	.
Armenia	10 Apr 2007	.
Austria	6 Feb 2007	.
Azerbaijan	6 Feb 2007	.
Belgium	6 Feb 2007	.
Bolivia	6 Feb 2007	.
Bosnia and Herzegovina	6 Feb 2007	.
Brazil	6 Feb 2007	.
Burkina Faso	6 Feb 2007	.
Burundi	6 Feb 2007	.
Cameroon	6 Feb 2007	.
Cape Verde	6 Feb 2007	.
Chad	6 Feb 2007	.
Chile	6 Feb 2007	.
Comoros	6 Feb 2007	.
Congo	6 Feb 2007	.

Costa Rica	6 Feb 2007	.
Croatia	6 Feb 2007	.
Cuba	6 Feb 2007	.
Cyprus	6 Feb 2007	.
Finland	6 Feb 2007	.
France	6 Feb 2007	.
Ghana	6 Feb 2007	.
Grenada	6 Feb 2007	.
Guatemala	6 Feb 2007	.
Haiti	6 Feb 2007	.
Honduras	6 Feb 2007	.
India	6 Feb 2007	.
Ireland	29 Mar 2007	.
Japan	6 Feb 2007	.
Kenya	6 Feb 2007	.
Lebanon	6 Feb 2007	.
Lithuania	6 Feb 2007	.
Luxembourg	6 Feb 2007	.
Madagascar	6 Feb 2007	.
Maldives	6 Feb 2007	.
Mali	6 Feb 2007	.
Malta	6 Feb 2007	.
Mexico	6 Feb 2007	.
Moldova	6 Feb 2007	.
Monaco	6 Feb 2007	.
Mongolia	6 Feb 2007	.
Montenegro	6 Feb 2007	.
Morocco	6 Feb 2007	.
Niger	6 Feb 2007	.
Paraguay	6 Feb 2007	.
Portugal	6 Feb 2007	.
Samoa	6 Feb 2007	.
Senegal	6 Feb 2007	.
Serbia	6 Feb 2007	.
Sierra Leone	6 Feb 2007	.
Sweden	6 Feb 2007	.
The Former Yugoslav Republic of Macedonia	6 Feb 2007	.
Tunisia	6 Feb 2007	.
Uganda	6 Feb 2007	.
Uruguay	6 Feb 2007	.

Vanuatu	6 Feb 2007	.
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